



Town of Bethel
Zoning Board of Appeals

PO Box 300, 3454 Route 55
 White Lake, NY 12786

A Work Session was held on July 15, 2019 at 7:00 PM at the Dr. Duggan Community Center, 3460 State Route 55, White Lake, New York. A regular meeting of the Zoning Board of Appeals followed on the same date at 7:30 PM. On the agenda at this time was the following:

In attendance: Steve Morey, Chairman, Jim Crowley, Vice Chairman, Richard Conroy, Cirino Bruno, Jesse Komatz, Dan Brey, Jim Ahearn, Bette Jean Gettel, Code Enforcement Officer, Jacqueline Ricciani, Attorney, and Jannetta MacArthur Recording Secretary.

Pledge to the flag.

Steve Morey: Jim Ahearn is now a board member.

Full board in attendance.

Excused: Dawn Ryder

Motion to approve the June 17, 2019 minutes by Richard Conroy, second by Jim Ahearn.

All in favor-7

Opposed-0

Agreed and carried

1) Application for a Use Variance for expansion of a non-conforming use, located at 425 Lt. Brender Highway, known as Bethel Tax Map #: 9-1-71, proposed by Yeshiva Gedolah Tefereth Shmuel.

Jay Zeiger: On behalf of the applicant.

Cirino Bruno: Who is the applicant?

Jay Zeiger: The applicant is Mr. Isaac Lichenstein, who is here as well. This is just a piece of the property. It is the relevant portion. This property is owned by an entity, Yeshiva Gedolah Tefereth Shmuel. They have owned the property at least 20 years, and Mr. Lichtenstein has leased this property, this bungalow from them.

Richard Conroy: Is there a written lease?

Isaac Lichenstein: No



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Jay Zeiger: It is season to season.

Cirino Bruno: What is YGTS?

Jay Zeiger: It is just an abbreviation....

Cirino Bruno: I understand that is it an LLC, a corporation?

Jay Zeiger: It is a corporation.

Cirino Bruno: What is scribbled on the signature line?

Jay Zeiger: That is Rabbi Truss.

Cirino Bruno: Who is Rabbi Truss?

Jay Zeiger: He is a board member of YGTS.

Cirino Bruno: What position is he?

Jay Zeiger: Do you know if he is an owner? (Speaking to Isaac Lichenstein)

Isaac Lichnstein: He is an owner.

Steve Morey: How many owners are there?

Jay Zeiger: I believe this is a non for-profit Religious Corporation who doesn't have owners. It is governed by their members. These three individuals are the board members that are elected as officers.

Richard Conroy: So, you don't need a resolution to authorize the person to sign this form?

Jay Zeiger: They signed a proxy.

Cirino Bruno: Rabbi Truss signed the proxy?

Jay Zeiger: Yes, on behalf of the organization.

Richard Conroy: But there is no authorization allowing him to sign....



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Jay Zeiger: There may or may not be, I can get you that if that is something you want.

Cirino Bruno: Does Mr. Lichtenstein have an interest in this non for-profit corporation?

Jay Zeiger: No, just as a renter and an occupant. He has lived there the last 20 summers. This past winter he approached Rabbi Truss and asked permission to renovate and to improve the bungalow, and that permission was granted, they said they would like him to hire a contractor and go ahead and do the work which is what Mr. Lichtenstein did.

Cirino Bruno: Does he have any written authorization granting that permission?

Jay Zeiger: I don't have it with me.

Cirino Bruno: Do you know if it exists?

Jay Zeiger: I don't know if it was written or oral. Was it written or oral?

Isaac Lichtenstein: Oral.

Jim Crowley: Why would you do that? This gentleman rents it seasonably, for 20 plus years. And then all of a sudden, he says I want to renovate and add on it. Why?

Jay Zeiger: Because he is going to live there this summer, and expects to live there for summers to come.

Jim Crowley: So, he told the guy I'm going to do the renovations and then I am going to live there for free for 10 years. I don't get that at all.

Jay Zeiger: I don't know the answer to those questions. A lot of those questions are outside of the variance request, so I wasn't prepared to answer those questions. I can certainly get that to you. Do you know the rental fee for the summer?

Isaac Lichtenstein: \$10,000 per summer.

Cirino Bruno: Is that the new rental or the old rental.

Dan Brey: Is that rental a written agreement?

Isaac Lichtenstein: I am paying for the whole rent.



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Jay Zeiger: Apparently the rent hasn't changed from last year to this year.

Richard Conroy: You invested \$30,000 in a house that you don't own. You have no lease, no rental agreement and you just put money into the rental?

Jay Zeiger: Do you want me to get something from Rabbi Truss or the officer of the organization? I am happy to provide that.

Jim Crowley: Really in this meeting here, that gentleman has nothing to do with this. It comes down to the person who owns that piece of property.

Jay Zeiger: Well he has an interest in it.

Jim Crowley: That would be a civil thing. They would be suing each other. You are here because it is built over the property lines, these additions.

Steve Morey: Jim, don't go too far. My recommendation is to continue with the Use Variance. Do you have more to add?

Bette Jean Gettel: This is a preexisting nonconforming use in the Agricultural District.

Steve Morey: I want to let these gentlemen proceed, because my recommendation is to only go with the Use Variance at this time because if that is denied, the Area Variance has no merit. There is no need.

Cirino Bruno: Who is the gentleman with Mr. Lichtenstein?

Jay Zeiger: That is his brother in law. He is just here for support.

Steve Morey: Do you have more to add?

Jay Zeiger: Yes. The property is owned by Yeshiva Gedolah Tefereth Shmuel. Mr. Lichtenstein has lived there for 30 some years. He asked for permission to renovate and expand the property which is what he did, and that was granted. He retained a contractor to do the work.

Cirino Bruno: Do you have the name of the contractor?

Jay Zeiger: Harry Heiniman – from Rockland County. Somebody did the addition; he did the addition.

Jim Crowley: Again, this is all speculation. There is no contract, there is no paperwork. It is he said,



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she said.....

Cirino Bruno: You are claiming there is a \$30,000 potential \$30,000 loss that will be sustained by these people. Maybe it was a gift, maybe it isn't worth \$30,000. Maybe there is a contract; maybe there is some kind of understanding....

Jim Crowley: Is there a building permit?

Bette Jean Gettel: There is no building permit.

Jim Crowley: Well there is not that either.

Cirino Bruno: He could have asked BJ for permission instead of asking YGTS.

Jim Crowley: If he had asked BJ for permission we wouldn't be here.

Jim Zeiger: That should have been the next step.

Cirino Bruno: The next step?

Jay Zeiger: The first step was for Mr. Lichtenstein to get permission from the owner to add on, the second step is to get a contractor. The third should have been a building permit. Unfortunately, Mr. Lichenstein expected that the contractor was going to do what he was supposed to do, and he didn't.

Richard Conroy: Unfortunately, it is the owners' responsibility to get the permit when you come down to it.

Jim Zeiger: I'm not disputing that, but I can't rewrite what has been done in the past.

Richard Conroy: It sounds like to me you have a case against the contractor, not here.

Jay Zeiger: Here is his only place of recourse if he would like the addition there. If he doesn't get permission and he doesn't get the variance then we have a whole new set of complications. Again, I can't rewrite what happened in the past. We have a piece of property, we have a bungalow that has been improved, and it is nicer than what it is there. We would like it to stay. The only place we can ask for that to happen is here.

Jim Crowley: Jay, let me ask you a question. You know the conditions of getting a Use Variance, and how tough it is. It is almost impossible. Do you really want to do this dance?



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Jim Zeiger: The difference though is, with your typical Use Variance you may have a piece of property that is either never been

Jim Crowley: Do you really want to go through this?

Jim Zeiger: We have no choice but to go through it, again without the variance....

Jim Crowley: You do have choices, you can go through this, or you can tear it down.

Jim Zeiger: Before we proceed to tear it down, we are coming to you here to ask for a Use Variance. There is a big difference, in your typical Use Variance; we walk in where the property hasn't been used for the use it is currently being used for.

Jim Crowley: You typically ask for permission and forgiveness.

Jim Zeiger: We want to change the use to something that is not permitted. Over here the bungalow colony stays where it is, whether the variance is granted or not. This particular bungalow would be impacted by the decision, but whether we get the variance or don't get the variance, the bungalow colony stays. The use is a preexisting nonconforming use, and the use will continue with or without particular variance for this bungalow. It is a far different ask, and a far less significant ask then if we were to walk in and say I just bought a residential house and I would like permission to open up a retail store in a residential district. It is a far less significant variance, what we are asking for here.

Dan Brey: It is built over the line also.

Cirino Bruno: We are not going there yet.

Jacqueline Ricciani: Jay, how are you going to deal with the encroachment on the neighbor's property? I don't think we can give you a variance to do that.

Jay Zeiger: They have been discussing with the neighbor to ask for an easement. The clarification here is whether the easement can be limited to just the land that it encroaches, or whether or not you are going to want a buffer beyond that, and that easement would have to be in writing, written and recorded.

Richard Conroy: Do you want to go through this Use Variance and go through the criteria?

Steve Morey: No, not in that formation. I would like to refer you to the code on Use Variances. The section specific to Use Variances and everything that applies to use variances and then you do some research and come back with some more information.



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Jay Zeiger: I expected from prior experience to kind of introduce it, get the full package, and do the public hearing in between, and then provide you with more details.

Steve Morey: We don't have enough details to make any kind of a judgement, or even to consider a public hearing. You need to prove to us the necessity for this Use Variance. Like Jim says, it is almost impossible, but if you want to make an attempt that is up to you folks. There are a lot of errors in this whole procedure as it has been described to me. I won't pass judgment on it, but you need to prove to us that the Use Variance request is obtainable.

Jacqueline Ricciani: I think what the board is asking for is that you provide some type, at least preliminary documentation or explanation to address each of the criteria that are listed in the code. Which are pretty comprehensive. Parts of it are included in the application. What the applicant put in to address those different criteria, it doesn't really address it. I'm going to guess the application was submitted without your assistance. Now that you are on board here, I think what the board is asking for is documentation and explanation to address the criteria, because the application doesn't quite do that. Am I right Steve?

Steve Morey: Yes. One example, as Rich suggested. The first step we are going to look or use as a test is "that they cannot realize a reasonable return provided such lack of return is substantial as demonstrated by competent financial evidence". Just from the discussion we've had here the rent per season is \$10,000 per year. That hasn't changed. From the conversation it doesn't seem like it is going to change. There isn't competent financial information or evidence here that matters in your request for the Use Variance; I am just using that as an example.

Jay Zeiger: I can address it now, but you are asking that to be addressed in supplemental submissions.

Steve Morey: You also mentioned, I believe there are three principles that are actual owners.

Jay Zeiger: I believe they are board members and officers.

Steve Morey: We have an application that is signed, the signature is not legible, and that doesn't state what the position of that person that signed that application is. How do I know the other two partners are in agreement with that individual?

Jacqueline Ricciani: Get us a corporate resolution authorizing the owner's proxy please?

Steve Morey: There is no documentation as to the business end of this whole entity.

Jim Crowley: How did he notarize his own signature? You can't notarize your own signature.



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Jay Zeiger: He didn't notarize his own signature; it is his daughter.

Jim Crowley: How can she notarize his signature? It is notarized in New Jersey.

Jacqueline Ricciani: If the document is signed in the State of New Jersey, and it seems that is where this individual is, if it was signed there, then it is appropriate to have the notary in New Jersey. Depends where this person is when it is being signed. A family member should not be notarizing either. Mr. Zeiger, we need clarification on this please.

Richard Conroy: You have no contractor for the building, you have no lease, and there is no documentation.

Jay Zeiger: Again, I need to figure out how to answer these questions.

Richard Conroy: We need written documentation.

Jim Crowley: You can't make it up now.

Jay Zeiger: I won't make it up. I have to find out the response to these questions. If he is prepared to go forward with an oral contract on a year to year lease.....

Richard Conroy: That won't work for us. We need written documentation. That may be fine in the bungalow colony, but that isn't fine in front of this board.

Jay Zeiger: No one is using the bungalow.

Jacqueline Ricciani: It is up to the applicant to submit documentation that they think will address the criteria, and I think Mr. Zeiger is asking for the opportunity to assemble whatever documentation may be available to address these issues and submit at a future meeting.

Steve Morey: I am not suggesting that you use our four-step check list; I am suggesting that you actually go to the code book under Use Variances.

Jacqueline Ricciani: The code is quite comprehensive.

Jay Zeiger: I understand.

Richard Conroy: No one is living there?



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Bette Jean Gettel: When I made a site visit today, the bungalow was not occupied.

Richard Conroy: So, you will not be occupying that bungalow this summer?

Jay Zeiger: Correct.

Steve Morey: You mentioned something about an easement.

Jay Zeiger: Before the work was done, this bungalow was in line with the other bungalows. The basis for my question, the easement that would be required by this board, is it just this, or is it that, and how much do you want, do you want the easement to meet the setback?

Steve Morey: I guess if you want to try to obtain that, you might as well, but I think your question has to do with setback. You need a 50 ft. setback from that structure within that easement to match the code.

Jay Zeiger: Before the work was done this bungalow was in line with these other four.

Steve Morey: Probably before the code was written, the way it is written now.

Jay Zeiger: Correct.

Cirino Bruno: And now you are enlarging it.

Jay Zeiger: The basis for my question, the easement would be required by this board, is it just this, and if so, how much do you want the easement to match the setback?

Steve Morey: I'm not necessarily saying that the easement is going to satisfy this complete board, but if you are going to try to get an easement to satisfy that then yes match the code.

Bette Jean Gettel: Keep in mind; they have done over 50% work of improvement in this unit. It needs to comply with building code, and with the setbacks.

Steve Morey: Before you get any deeper, what do you want to do; you are on the agenda for an application for an Area Variance as well this evening

Jay Zeiger: I think the conversation we had encompasses both variances. We need to caucus and make a determination which way we are going and if we want to move forward and provide the documentation and responses of what you are looking for.



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Steve Morey: In essence, we are putting the area variance on hold at this point.

Jim Crowley: If you want to do something go for your use.

Jay Zeiger: If we are coming back next month, we will come back with both.

Cirino Bruno: Mr. Zeiger has he paid his rent for the season?

Jay Zeiger: I don't know.

Cirino Bruno: Maybe we need proof of that too.

Bette Jean Gettel: Time frame wise gentleman, your next meeting is August 12th. The latest for you to get paperwork to me would be July 29th. If you need more time that will bring you into September.

Jay Zeiger: Thank you and see you next month.

2) *Application for an Area Variance from the set backs of a non-conforming use, located at 425 Lt. Brender Highway, known as Bethel Tax Map #: 9-1-71, proposed by Yeshiva Gedolah Tefereth Shmuel.*

Tabled

Steve Morey: I have a resume from Joseph Andrew Pawlick in front of me. Who applied for the alternate position? This gentleman originally applied for the board member position, but however he has not come to any meeting to be interviewed. We advertised for an alternate position, after we asked the Town Board to appoint Jim Ahearn, and that has been done. We have interviewed Wendy Brown. I would like to get a feel from the board, if we should interview this gentleman.....

Cirino Bruno: I think we should interview him.

Bette Jean Gettel: I did invite him, but I didn't give him much notice. I can invite him for next month.

Jacqueline Ricciani: If this applicant does not come back because they don't have their submission together or whatever, do you still want to have the meeting for the purpose of interviewing the candidate.

Steve Morey: In my mind this gentleman has had the opportunity to attend three meetings, I hate to have a meeting to just interview, and appoint an alternate.



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Bette Jean Gettel: Just give him one more chance.

Steve Morey: BJ I would suggest that you send this gentleman an invitation to attend the meeting in August.

Bette Jean Gettel: I will communicate with him.

Motion to adjourn by Jim Crowley, second by Cirino Bruno.

All in favor – 7

Opposed-0

Agreed and carried

Respectively submitted,

Jannetta MacArthur

Recording Secretary.